

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KAREN WILKERSON

And

JOLIE SMITH

Plaintiffs

V.

KAREN PHILLIPS,
In her official capacity as the Clerk for
Smith County

Defendant

Symplectic geometry

CIVIL ACTION NO.

JUDGE

**MOTION FOR PRELIMINARY INJUNCTION, OR IN THE ALTERNATIVE, FOR A
TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE COURT:

1. The above referenced Plaintiffs move this Court for an equitable order that the Defendant be required to immediately issue a marriage license in light of Obergefell v. Hodges ____ S.Ct. ____ (June 26, 2015), an opinion of the Supreme Court of the United States issued on this date, holding that:

The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry.

Id. At p. 22.

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the

14th Amendment to the United States Constitution.

FACTS

3. Earlier this day Plaintiffs Karen Wilkerson (“Wilkerson”) and Jolie Smith (“Smith”) sought a marriage license at the office of Defendant Karen Phillips (“Phillips”), the Office of the County Clerk of Smith County, in Tyler, Texas. The County Clerk refused to oblige the request solely on the stated ground that the form they used had separate sections for a “male” or “man” and “female” or “woman”, *i.e.* the form they have chosen to use only accommodates opposite sex couples.

4. The true reasons for Defendant Phillips' refusal to issue the license are prejudice against same-sex couples, to try to humiliate and shame the Plaintiffs, to deprive them and their relationship of the dignity to which they are by law entitled, and to inconvenience the Plaintiffs. The Defendant is just mean-spirited and petty. The injuries Defendant Phillips seeks to visit on Plaintiffs are immediate and irreparable unless the relief sought is granted. Plaintiffs families are present today to consummate their wedding. A preacher is standing by to perform the ceremony. This unwarranted delay is causing mental anguish and economic loss. It is causing continued damage to complainants.

CAUSE OF ACTION

5. Plaintiffs' cause of action is authorized by 42 U.S.C. § 1983, because they seek to remedy the violations of their rights guaranteed by the Due Process and Equal Protection clauses of the 14th Amendment to the Constitution of the United States. A motion may be brought to the court prior to filing of a complaint under these circumstances. Fed. Practices and Procedure § 2949.

RELIEF SOUGHT

6. Plaintiffs seek the order referred to above pursuant to Rule 65 (a) and/or (b), Fed.R.Civ.P. In addition to the equitable relief requested above Plaintiffs seek damages and all other relief authorized by §1983 as well as costs of suit including attorney's fees as authorized by 42 U.S.C. §. 1988.

Respectfully Submitted,

/s/ Blake Bailey

Blake Bailey
Bailey Law Firm
121 N Spring Ave
Tyler, TX 75702
903.593.7660
blake@bailey-law.com
01541500

Certificate of service and conference

The undersigned attempted to speak with Defendant Phillips about this matter in order to comply with Local Rule 7, but she was unwilling. The undersigned has also hand delivered a copy of this Motion to her at her office, before filing.

/s/ Blake Bailey

Blake Bailey